THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.17908 of 2007

Dated: 18.12.2007

Between:
Anthati Durgaiah.

..Petitioner.

and

State Bank of India, rep. by its Branch Manager, Narayanaguda Branch, Hyderabad.

..Respondent.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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ORDER:

This Court ordered notice before admission on 23.08.2007, and on 10.09.2007, granted interim stay for limited period. It is pertinent to note that on 08.10.2007, the interim stay already granted was extended on condition of the petitioner depositing rest of the amount within two months from the said date.

2. Sri Bommagani Prabhakar, learned counsel for the petitioner had taken this Court through the contents of the affidavit and would maintain that in the facts and circumstances, reasonable time to be given to the petitioner to clear off the loan amount.

3. On the contrary, Sri Deepak Bhattacharjee, learned counsel representing the respondent bank had taken this Court through the counter-affidavit and would maintain that the writ petition is not maintainable and the same is liable to be dismissed giving liberty to the petitioner to pursue other remedies available under law.

4. This writ petition is filed praying for a writ of mandamus declaring the impugned auction notification published in Andhra Jyothi Telugu Daily Newspaper on 09.08.2007 proposing to conduct auction of the property of the petitioner bearing Plot No.16 in Sy.No.63, Ward-2, Block No.1, Nagole, Fathullaguda village, Uppal Mandal, R.R.District, as illegal, arbitrary, unconstitutional and against the principles of natural justice, and consequently set aside the same

insofar as item No.4 of the auction notification is concerned.

5. It is averred that the petitioner purchased a house plot No.16 Sy.No.63, Ward-2 Block No.1, Nagole, Fathullaguda village, Uppal Mandal, R.R.District from its lawful owner, by virtue of registered sale deed bearing Doc.No.893/2002, dated 15.03.2002. Subsequently, the petitioner intended to construct a residential house and accordingly approached the respondent bank for sanction of construction loan. The respondent bank after due verification of the title deeds and other relevant documents furnished by the petitioner had sanctioned the loan to the tune of Rs.5,50,000/-. Thereafter, the respondent bank started releasing the amounts as per the stage of the construction. As per the terms and conditions of the loan, the period of loan is 15 years and payable at the rate of Rs.74,000/-per annum inclusive of interest.

6. It is further averred that the petitioner completed the construction work by borrowing hand loans from his friends and relatives and meanwhile, unfortunately, as he fell sick and suffered with domestic problems, he could not pay some loan instalments to the respondent bank within time. This fact was brought to the notice of the respondent bank and requested it to grant some time so as to enable him to pay the total arrears of loan instalments and the petitioner was under the bonafide impression that the respondent bank will not resort to adopt any illegal methods.

7. It is further averred that while the matters stood thus, petitioner reliably learnt that the respondent bank obtained an ex parte decree on 16.04.2007 in O.S.No.2475 of 2006 on the file of the I Additional Senior Civil Judge, R.R.District at L.B.Nagar. Immediately, he filed necessary applications for setting aside the ex parte decree and also petition for condonation of delay and the said petitions are pending for consideration. While so, he came to know that the respondent bank

had issued a caution notice in the newspaper about his property. Immediately, he approached the respondent bank and caused enquiries about his arrears and paid an amount of Rs.1,00,000/- on 08.03.2007, Rs.39,000/- on 16.03.2007 and Rs.80,000/- on 09.06.2007. To his surprise, the respondent bank after receipt of the above said amount, got published an auction notice in Andhra Jyothi Telugu Daily on 09.08.2007 under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act' for the purpose of convenience) in which his property was shown at Sl.No.4.

8. It is further averred that the respondent bank without any protest received the amounts paid by the petitioner as stated above, and after receipt of the said amounts got issued the impugned auction notification during the pendency of the petition filed by the petitioner for setting aside the ex parte decree obtained by the bank. It is stated that on one hand, the respondent bank had obtained an ex parte decree and on the other hand issued the auction notification under the Act. He is always ready and willing to pay the balance loan amount and further the term of the loan is in existence. Any action to be taken by the respondent bank will result in manifest injustice and severe loss to him.

9. In such circumstances, the writ petitioner approached this Court praying for appropriate reliefs.

10. In the counter-affidavit filed by the respondent, it is averred that in the instant case, the proceedings under Section 13(2) of the Act were initiated by the respondent bank for recovery of debt and after failing to serve the notice on the petitioner in normal course, a demand notice was published in widely circulated newspapers on 27.11.2006 giving 60 days time to the petitioner to liquidate the entire liability. It

was specifically mentioned in the demand notice that the liability to be liquidated was Rs.6,21,953/- as on 30.09.2002 and further interest as per contractual rate shall have to be paid from the said date till liquidation of the liability. In the notice, it was also mentioned that the house constructed on plot No.16 in Sy.No.63, Ward-2 Block No.1, Nagole, Fathullaguda village, Uppal Mandal, Rangareddy District was mortgaged to secure the liability. The petitioner did not choose to liquidate the liability within the said period of 60 days. No reply was given by the petitioner inspite of the fact that the notice was published in widely circulated newspapers. In view of the above circumstances, the respondent bank initiated further proceedings under Section 13(4) of the Act and the possession notice was accordingly affixed at the site. In compliance of the Rule 8(1) and (2) of the Rules, 2002 the notice was also published in two widely circulated newspapers, out of which, one was in vernacular language i.e., Telugu Eenadu on 31.03.2007. After taking over possession, the respondent bank further proceeded against the property and the auction notice was published fixing the date and time as on 12.09.2007 at 3.00 PM. After the auction notice was published in widely circulated newspapers on 09.08.2007, the respondent bank had sought the assistance of District Magistrate, Rangareddy District under Section 14 of the Act for taking over physical possession of the property and taking over the possession was ordered by the District Magistrate under Proceedings No. 8316 of 2007 dated. Nil, and the possession was finally handed over by conducting panchanama on 15.09.2007 at 5.00 PM. The allegation leveled by the petitioner is therefore not tenable in the eye of law. As per the statement of account maintained by the respondent bank after giving credit to the sum of Rs.1.00,000 paid on 08.03.2007, Rs.39,000/- on 16.03.2007 and further sum of Rs.1,80,000/- as on

09.06.2007, a total sum of Rs.4,20,225.17ps is due and payable with further interest as per the contractual rate from 08.09.2007 till the date of full and final payment.

11. Further it is stated that the respondent had followed the provisions of the Act and the Rules framed thereunder in its true perspective and there was no violation of any Rules.

12. Further, it is stated that against the proceedings under Section 13(4) of the Act, the petitioner is having remedy of appeal under Section 17 of the Act before Debt Recovery Tribunal, Hyderabad. Against any order passed by Debt Recovery Tribunal under Section 17, the petitioner also had the remedy of second appeal before the Debt Recovery Appellate Tribunal under Section 18 of the Act. An in-house mechanism is provided under the Act itself and the petitioner had invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India without exhausting the alternate remedy available to the petitioner. A clear ratio was laid down by the Apex Court in Punjab National Bank v. O.C.Krishna and others reported in 2001 (6) SCC page 569 that no one had the right to invoke the extraordinary jurisdiction of this Court under Article 226 or 227 of the Constitution of India or file a civil suit without exhausting the remedy of appeal provided under the statute. As such steps taken by the borrower or guarantor shall derail the fast track procedure provided under the statute. In the instant case also the extraordinary jurisdiction of this Court is invoked without exhausting the remedy of appeal under Sections 17 and 18 of the Act and hence, this Court may be pleased to decline to exercise the jurisdiction in entertaining the writ petition. The writ petition is not maintainable both on question of facts and law.

13. In the light of the respective stands taken by the parties, since a

request is made by the petitioner that he is ready and willing to discharge the loan amount provided sufficient time is granted, he is at liberty to make a representation to the respondent bank in this regard and it is for the respondent bank to take appropriate decision. However, inasmuch as the petitioner is having an effective alternate remedy, this Court is not inclined to interfere with the impugned action in any manner in the present writ petition.

14. With the above observations, the Writ Petition is hereby dismissed. No order as to costs.

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P.S.NARAYANA,J

Dated: 18.12.2007.

sj